IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 477 OF 2000

Baliram @ Balu Bhau Panhalkar,]
Convict No.C-1265, Presently lodged in]
Kolhapur Central Prison, Kolhapur-416 007.] .. Appellant (Ori. Accused)

Versus

The State of Maharashtra,]
Through: P.S.O. Police Station, Kokrud.] .. Respondents

Mr. B.G. Tangsali for the appellant.

Mrs. P.H. Kantharia, A.G.P. for the respondents.

CORAM: V.G. PALSHIKAR &
ANOOP V. MOHTA, JJ.

DATED: 7TH SEPTEMBER, 2004.

ORAL JUDGMENT: *[Per Anoop V. Mohta, J.]*

1. A father raped his own daughter and strangled her. This was the case of the prosecution which resulted into the conviction under Section 302 with

Section 376 of the Indian Penal Code, whereby, the appellant-accused has been sentenced to imprisonment for life and a fine of Rs.5,000/- and if defaulted, rigorous imprisonment for one year. The substantive sentence, as ordered, shall run concurrently. Therefore, this Appeal against the order of conviction by the appellant-accused.

2. The appellant married the complainant Sau. Mangala Baliram 12-13 years ago before the date of the incident. Their relation was strained as the appellant was alcoholic and was treating her badly. The deceased daughter Vaishali, was born out of their marriage. The complainant, because of the constant harassment, left the house of the accused, two and half years, before the date of the incident. The said daughter used to live along with her mother-complainant, at village Khiravade. The accused forcibly took the custody of Vaishali, being his daughter, two months' prior to the date of the incident. She was living with the accused at Panhalkarwadi. Her age was about 8 to 9 years.

3. There was a programme of Dnyaneshwari parayan at village Kusaiwadi in the temple of Kusaidevi. Rakhubai (PW6) on 18th April 1997, at about 9 p.m., heard the shouting as the accused was abusing the deceased Vaishali under the influence of alcohol. She deposed that they had attended the

programme of Dnyaneshwari on the date of the occurrence upto about 4.00 to 4.30 a.m. The said programme used to commence from 8.30 p.m. To 6.30 a.m. One Kasabai Panhalkar (PW7), who was proceeding towards the cattle shed after returning from the above programme at about 4 to 5 a.m. (morning of 19.4.1997), saw deceased Vaishali lying in front of the house of the accused. She, therefore, called the accused and interrogated him about the same. One Laxman had also gone to the house of the accused and found that Vaishali was dead and blood was oozing from her vagina, nose and ear. The said Laxman then went to Sarjerao, who was the brother of the accused and also went to the Police Patil and furnished the information about the offence. It is the case of the prosecution that the accused was repentive and was beating his face by his own hands. The accused was also dashing his head against the wall. There was swelling over the forehead of the accused.

4. On 19/4/1997, at about 11.30 a.m., one Sarjerao Bhau Panhalkar informed the complainant that the accused strangled Vaishali. The complainant, along with her father and other relatives, therefore, went to Panhalkarwadi, at the house of the accused. They found the dead body of Vaishali lying on a *charpai*. There were abrasions and various ligature marks around her neck. Blood was oozing from her ear and nose, and also from her vagina. The complainant,

therefore, suspected strangulation and rape of her minor daughter by the accused. Hence, she immediately approached the Police along with local Police Patil and furnished information to PSI Sanjay Nikam (PW13). The said information was reduced into writing and offence was registered as Crime No.5/97, under Section 302 and 376 of the IPC on 19/4/1997. PW13 retained the case diary for further investigation. The investigation commenced thereafter. The said PSI (PW13) visited the incident spot. He saw and noted the scene of the incident and the dead body of Vaishali over the *charpai* with injuries. There were blood stains on her skirt, *jangya* and blouse. He also saw blood oozing from her ear, nose and vagina and the ligature marks around her neck. The Inquest & Spot Panchanama were drawn (Exhibit-16 & 17) in the presence of Panchas Jaywant Bhau Pawar (PW2), Raghunath Dhondiba Warang (PW12) and Sou. Malan Maruti Katake. The dead body was referred to the Medical Officer Civil Hospital, Sangli, to conduct the autopsy. The blanket and towel with blood stains were also seized under the Panchanama. The chain around the neck of the deceased was also seized. The accused was present in the house and, therefore, he was also arrested. He was wearing inner pant containing semen stains. The same was also seized under the Panchanama. The accused was initially brought to the Police Station and later on referred him to the Medical Officer, Kokrud, for examination. Dr. Parit Bhupal Dinkar (PW5) had examined

the accused and found swelling over both his hands, dorsal and ventral aspect and swelling about 2 X 2 inches over forehead. The Certificate (Exhibit-27) was issued accordingly. The Medical Officer Dr. Vijaykumar Mule (PW4) conducted autopsy with the help of Dr. Veena Dhavalikar (PW14) and recorded/noted the injuries. Dr. Veena (PW14) found teared hymen oozing of blood from torn vagina, posterior vaginal wall 1 cm X muscle deep with other injuries, anal splincter teared. The Medical Officer had found the probable cause of death due to asphyxia because of strangulation. The Post Mortem Report dated 20/4/1997 (Exhibit-24) was accordingly issued by Dr. Vijaykumar Mule (PW4). Age of genital injuries were within 6 hours of the death. The dead body was examined on 19/4/1997 from 10.00 p.m. to 1.00 a.m. of 20/4/1997.

5. The appellant-accused, on 21st April 1997 in the presence of Panchas Pandurang and Balue Pandurang, agreed to show the rope used by him for commission of the offence. The confessional statement in the form of Memorandum, was reduced into writing in the Police Station, Kokrud. The said rope was found at the place, as pointed out by the accused and, therefore, the Panchanama was recorded in the presence of the Panchas and the accused. The photographs were also taken. The Police had recorded the statement of the witnesses viz. Rakhubai Narayan Naikal (PW6), Kasabai Laxman Panhalkar

(PW7) and Yeshabai, Ganpati Ananda, Sarjerao Bhau and Sakhubai w/o Baban Kisan Dhondi.

6. After the due Panchanama, the necessary material, clothes were sent to the Chemical Analyzer, Pune, for analysis. As per the Analysis Report, the blood group of the accused was “AB”. There were semen stains detected on the jangya on the person of the deceased Vaishali. After due investigation, it was found that the accused had committed rape on his own minor daughter and subsequently, strangled her with the rope. Accordingly, the charge sheet was filed in the Court of JMFC, Shirala. The accused denied the charges framed under Section 302, 376 of the IPC. Therefore, the trial commenced.

7. The learned Additional Sessions Judge, Islampur, after considering the material, as well as, the evidence placed on the record by the prosecution held that the death of Vaishali was homicidal. That the accused committed rape on his own daughter Vaishali in the night of 18th April, 1997. The accused committed murder with intention and knowingly strangled his own daughter with a nylon rope. On this finding, it was held that the accused committed offence under Section 376 and 302 IPC and, therefore, was convicted for those offences.

8. The prosecution has, in all, examined 15 witnesses. The Inquest Panchanama (Exhibit-16), Post Mortem Report (Exhibit-24) has been duly proved by the Medical Officer Dr. Vijaykumar Mule (PW4) which established the homicidal death of Vaishali. PW 4 – Dr. Vikaykumar has conducted the autopsy and found that there were various injuries on the person of the deceased Vaishali which includes 15 abrasions and one ligature mark extending from lateral aspect of left side of the neck to the right side of the neck and there was ligature mark of 2.5 cms. on the above injury (No.16) extending from lateral aspect from right to left side.

9. The lady Medical Officer Dr. Veena Dhavalikar (PW14) examined the deceased Vaishali' sprivate parts and issued the Medical Certificate (Exhibit-50). At the time of autopsy, she was also present. She deposed about the broken hymen; blood oozing through vagina, posterior vaginal wall was torn about 1cm, irregular muscle deep with fresh bleeding. This medical evidence was not seriously challenged. There was no much dispute regarding the homicidal death of Vaishali and the offence of rape. It was established that Vaishali was minor. The accused-appellant was residing with Vaishali at Panhalkarwadi. The medical evidence and the Certificate (Exhibit-50) issued by Dr. Veena Dhavlikar, proved that rape was committed on the deceased Vaishali.

10. The defence was raised that someone else, other than the accused, might have committed the rape and merely on suspicion, he was implicated. There were enemical terms between complainant Mangala. She deserted the accused and had illicit relation with one Sarjerao.

11. PW6, Rakhubai, who deposed that she had gone towards her old house to bring hens and cocks. It was evening time and while passing through the house of the accused, she noted that the accused was abusing Vaishali. Rakhubai (PW6) was well acquainted with the activities and behaviour of the accused as she was residing in the same lane where the house of the accused was situated. The several abrasions all over the body of the deceased Vaishali and tear of the hymen, marks of violence on the body and the back of the victim are sufficient to infer the crime/offence committed by the accused. Therefore, non detection of semen over the vaginal swab and the vaginal smear slide itself cannot affect the medical evidence. It may be noted that the accused was also wearing underwear (article 7) which was seized under the Panchanama and the said underwear was also sent to the Chemical Analyzer, Pune, for analysis. As per the Report of the Chemical Analyzer (Exhibit-8) underwear (article 7) was containing semen stains of 3 cms in diameter. The jangya of the deceased

(article 10) was seized under the Panchanama (Exhibit-24) was also sent to the Chemical Analyzer for analysis and as per the Chemical Analyzer' sReport (Exhibit-8) jangya (article 10) contained two semen stains of 2 cms in diameter. In these circumstances, as observed by the Additional Sessions Judge, it is difficult to accept that someone else other than the accused had committed rape on the deceased Vaishali. There is evidence to prove that Vaishali was lastly seen in the company of the accused. That Vaishali was with the accused and nobody else was present in the house of the accused. Vaishali did not attend the programme of Dnyaneshwari parayan which was in progress as per the version of Raghunath Warang (PW12). The credibility of the evidence of the complainant Mangala (PW8) Rakhubai (PW6) and the Medical Officer could not be shattered or shaken by the defence/accused. Their evidence, therefore, proves the case of the prosecution in reference to the offence under Section 376 and 302 of IPC.

12. Further, with regard to the offence under Section 302 of IPC, the medical evidence, Inquest Report (Exhibit-16), Panchanama (Exhibit-17) and related corroborative evidence also justifies the conviction. The Certificate issued by the Medical Officer (Exhibit-25) certifies that the cause of death was asphyxia due to strangulation. Dr. Vijaykumar Mule (PW4), Dr. Parit Dinkar (PW5) and the corroborative evidence have proved the injuries and the cause of

the death. There was no substantial challenge raised about the evidence of these witnesses. The evidence of these witnesses remained unhampered. The learned Additional Sessions Judge, after considering the material, as well as, the evidence on the record read with the other evidence, including the Chemical Analyzer' sReport i.e. Exhibits-1 to 7 and 8, held that the death of Vaishali was homicidal. The cause of death, as recorded, was strangulation.

13. The complainant Sau. Mangala (PW8) has given all the details about the behaviour of the accused and how he disposed of the agricultural lands to fulfill his addiction of liquor. She also stated how she was subjected to cruelty when she was residing with the accused. The accused used to beat her under the influence of alcohol. She was constrained to leave the house of the accused, along with minor daughter Vaishali. However, accused forcibly took Vaishali from her custody. She had made complaint against the accused with the Mahila Mandal at Sangli for the custody of Vaishali. One aspect which cannot be overlooked is that since 5 – 6 years, the accused was residing alone. Since the last 3 – 4 months prior to this incident Vaishali was residing with the accused. The appellant' saddiction to liquor is also deposed by PW6 & PW7. They also deposed about appellant' silltreating and abusing Vaishali under the influence of liquor.

14. There is much said about the evidence on the record to show the motive of the accused. In view of the evidence on the record, it is difficult to discard the whole case of the prosecution for want of alleged motive. On the contrary, there is sufficient evidence on the record to show the conduct, as well as, the nature of the accused and the surrounding circumstances. It is difficult to believe also that the Police has fabricated the entire case against the accused to support the complainant Mangala. The chain of events connect the appellant with the crime, which proves that the appellant had caused Vaishali' sdeath with requisite intention and knowledge. The complainant stated (Exhibit-33) that between 8.00 p.m. of 18/4/1997 to 7.00 a.m. of 19.4.1997, Baliram had forcible intercourse with her daughter and strangled her so that she would not disclose this heinous crime to any other person.

15. The confession of the appelalnt was reduced into writing in Kokrud Police Station as per Exhibit-20. The said confession is further proved by witness Balu Undalkar (PW3) as the same was recorded and duly signed by the said witness. The witness has identified the signature over the confessional statement. The accused has admitted in his confessional statement about the heinous crime which was recorded immediately. Even though there may not be conviction, solely based on such confession, this is an additional factor which

also needs consideration in the present Appeal. The immediate circumstance and conduct of the accused which shows that he also admitted in his statement under Section 313 of the Criminal Procedure Code, to the effect that he had beaten by his own hands and also hit his own forehead on the wall to express his repentance. Dr. Parit (PW5) had examined the accused and recorded the swelling over both hands, dorsal and ventral aspect and swelling over forehead 2" X 2" situated at the middle of the forehead and accordingly, issued Certificate (Exhibit-27). This part is also proved in the evidence of the Panch witness that the accused was repenting. The same was also recorded in the evidence of Sanjay Nikam (PW13).

16. The recovery of the seized rope is also proved through Panchanama (Exhibit-21). The death was caused due to strangulation. Medical Certificate as referred above, reflects the same, including the nature of the injuries caused around the neck of the deceased. There is evidence also that the injuries in question can be caused by such rope. At the instance of the accused, the said rope was recovered and accordingly, prosecution has also brought on the record the instrument and/or weapon by which the accused had caused the strangulation. The said confessional statement (Exhibit-20) and the Panchanama (Exhibit-21) are also proved by Balu Pandurang (PW3).

17. The above finding is also relevant to consider the role played by the accused in the present matter. After scrutinising the evidence of the complainant Sau. Mangala (PW8) and other prosecution witnesses viz. Rakhubai (Pw6), Kasabai (PW7), Laxman (PW10) and Raghunath (PW12), there remains no doubt that the appellant-accused had committed the aforesaid heinous crime. The above evidence of the prosecution, as referred above, was nowhere disturbed or shattered in the cross-examination. This evidence, therefore, cannot be discarded. The chain of events and circumstances lead to only one conclusion that the appellant had committed the offence. It is difficult to accept the submission of the learned Advocate appearing for the accused that the entire evidence was fabricated and the evidence of Mangala, read with the other witnesses who are relatives of Mangala, is being of persons interested, has also no foundation. The Apex Court in **AIR 1965 S.C., 328** *[Vasanti & Ors. Vs. State of U.P.]* held that the testimony of interested witnesses is required to be evaluated with caution. There is no rule that such testimony of related witnesses should be mechanically rejected. We have gone through the whole evidence led by the prosecution and after evaluating the testimony of the aforesaid witnesses and the other corroborative evidence on the record, we see that their evidence is reliable and creditworthy. The complainant Mangala, merely because she is the wife of the accused having bad relations since long, by that itself is no reason to believe

the case of the accused that he was falsely implicated by her with the help of the Police. Even though other one or two witnesses, though related to the said Mangala, that itself cannot improve the case of the accused in any way. No other evidence had been led by the defence in the matter. The evidence led by the prosecution including the corroborative evidence, shows that accused and deceased Vaishali were seen last together. There is a sufficient evidence on the record to show that the accused was lastly in the company of the deceased Vaishali as she was residing with the accused in the same house. There is nothing on the record to show that she had attended the programme of Dnyaneshwari on the date of the incident. On the contrary, the evidence is that she had not attended the said programme and she was lastly seen with the accused. The Apex Court in the case of *Molai & Anr. Vs. State of Madhya Pradesh,* **AIR 2000, S.C., 177**, as relied by the prosecution, also supports the case of the prosecution in the facts and circumstances of the case. In that case also, accused was convicted under Section 302 r/w Section 376 of IPC on the circumstantial evidence and suffered death penalty. It is settled that accused can be convicted on the basis of circumstantial evidence, if duly corroborated by other evidence.

18. There is no doubt, in the present case, that the conviction is based

on the circumstantial evidence and supported by the other corroborative and medical evidence. However, after scrutinising the testimony of all the witnesses (PWs 1 to 15), which remained unshattered and thereby, supported* the prosecution case, we see there is no reason to interfere with the order of conviction passed by the Additional Judge, Pune, including the award of sentences under Section 302 read with Section 376 of the Indian Penal Code. There is no merit in the Appeal.

19. In view of this, the Appeal is dismissed. The sentences, as awarded, are accordingly confirmed.

[V.G. PALSHIKAR, J.]

[ANOOP V. MOHTA, J.]